

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

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BERNARD BERGERON,

Plaintiff,

-vs-

LOWE'S HOME CENTERS, INC., WHIRLPOOL
CORPORATION and ROPER BRAND HOME
APPLIANCES,

Defendants.
-----X

ECF CASE

CIVIL CASE MANAGEMENT
PLAN AND SCHEDULING
ORDER

08 CIV 1860 (CLB)

This Court requires that this case shall be ready for trial on or after April 13, 2009.

The Case Management Discovery Plan and Scheduling Order is adopted, after consultation with counsel for the parties, pursuant to Rules 26(f) and 16 of the Federal Rules of Civil Procedure.

This case is to be tried to a jury.

Joinder of parties is to be accomplished by December 1, 2008.

Amended pleadings may be filed until December 1, 2008.

Discovery:

1. Interrogatories are to be served by all counsel no later than August 1, 2008, and responses to such interrogatories shall be served within thirty (30) days thereafter. The provisions of Local Civil Rule 33.3 shall not apply to this case.
2. First request for production of documents, if any, to be served no than August 1, 2008.
3. Depositions to be completed by November 14, 2008.
 - a. Unless counsel agree otherwise or the Court so orders, depositions are not to be held until all parties have responded to any first requests for production of documents.
 - b. Depositions shall proceed concurrently.

- c. Whenever possible, unless counsel agree or the Court so orders, non-party depositions shall follow party depositions.
 - d. If the defense of qualified immunity from suit as a matter of law has been or will be asserted by any defendant(s) with respect to any claim(s) in the case, counsel for any such defendant(s) shall, within thirty (30) days of this order depose plaintiff(s) at least concerning all facts relevant to the issue of qualified immunity. Within thirty (30) days thereafter defendant(s) shall serve consistent with Local Rule 6.1 and file a motion under Rule 12(c) or Rule 56, returnable on a date posted in the New York Law Journal by Judge Brieant for hearing motions. The motion shall in the absence of agreement of counsel, be limited to the issue of qualified immunity, and plaintiff(s) version of the event shall be assumed turn for the purpose of the motion. **Failure to comply with this provision of this Order shall operate as a waiver of the opportunity to resolve the issue of qualified immunity by motion prior to trial.**
- 4. Any further interrogatories, including expert interrogatories, to be served no later than December 1, 2008.
 - 5. Requests to Admit, if any to be served no later than December 1, 2008.
 - 6. Additional provisions related to discovery agreed upon by counsel for the parties are set forth in item 7 and 8, below.
 - 7. All **fact** discovery is to be completed by December 31, 2008.
 - 8. All **expert** discovery is to be completed by:
 - a. Plaintiff's expert disclosures regarding treating physicians and retained expert reports to be completed by January 15, 2009.
 - b. Defendant's expert reports to be completed by February 27, 2009.
 - c. Expert depositions by March 31, 2009.

Dispositive motions, if any, must be served on notice as required by Local Civil Rule 6.1, and must be returnable before the Court on a published day, no later than three weeks before the ready for trial day.

Next Case Management Conference 4/3/09 9:00
(This date will be set by the Court at the first conference)

Joint Pretrial Order is required only if counsel for all the parties agree that it is desirable, or the Court so orders.

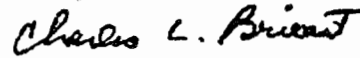
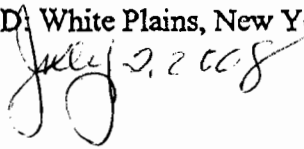
This case has been designated to the Hon. Lisa Margaret Smith, United States Magistrate Judge at White Plains for discovery disputes if the Court is "unavailable" and for trial under 28 U.S.C. § 636(c) if counsel execute their consent in writing.

Strict compliance with the trial readiness date will be required. This Plan and Order may not be changed without leave of the Court or the assigned Magistrate Judge acting under a specific reference order.

Upon signing a Consent for Trial Before a United State Magistrate Judge, the Magistrate Judge will establish an agreed dated certain for trial and will amend this Plan and Order to provide for trial readiness consistent with that agreed date.

SO ORDERED:

DATED: White Plains, New York



Charles L. Brieant, U.S.D.J.